

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
Gary Karlin Michelson)
Serial No.: 09/605,001) Group Art Unit: 3764
Filed: June 27, 2000) Examiner: M. Brown
For: APPARATUS AND METHOD OF)
INSERTING SPINAL IMPLANTS)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

SECOND REQUEST FOR INTERFERENCE UNDER 37 C.F.R. § 1.607

Applicant hereby requests an interference with U.S. Patent No. 6,500,180 to Foley et al. (hereinafter, "Foley '180") pursuant to 37 C.F.R. § 1.607(a). A proposed count is attached hereto.

Claims 13, 14, and 16 of Foley '180 correspond to claims 1-3, respectively, of the proposed count. Claim 1 of the proposed count differs from claim 13 of Foley '180 only in that "connect" has been changed to "connected" in line 5. Claims 130-132 of the present application also correspond to claims 1-3, respectively, of the proposed count.

Claim 1 of the proposed count is supported in Applicant's disclosure. For example, Applicant discloses a method of maintaining distraction of a spinal disc space including the steps of exposing a portion of the spine at the disc space (specification, page 34, lines 8-10); and distracting the disc space to a desired height with a disc

Request for Interference 12-29-03

distractor (specification, page 34, lines 19-22).

Applicant also discloses the step of selecting first and second shims that each have a shaft 1201, 1202 connected to a blade 1220, 1222, respectively. (See, e.g., specification, page 65, lines 20-26; Fig. 35). Each blade disclosed by Applicant has a height between a top surface and a bottom surface that corresponds to the distracted disc space height. (See, e.g., specification, page 65, lines 26-28; and page 63, lines 25-26; Fig. 32). Each blade also has a length extending between a leading end and a trailing end, and a thickness extending between a first side surface and a second side surface. (See, e.g., Fig. 35, blades 1220, 1222).

Applicant also discloses the steps of inserting the first and second shims into the disc space, a side surface of each shim being adjacent one side of the disc distractor. (See, e.g., specification, page 34, lines 23-26; Fig. 35; when first and second blades 1220, 1222 are inserted into the disc space, they will be adjacent the distractors already positioned in the disc space).

Applicant further discloses removing the disc distractor from the disc space (specification, page 34, line 31) and performing subsequent procedures in the disc space (specification, page 34, line 31 to page 35, line 5).

Claim 2 of the proposed count is supported in Applicant's disclosure. For example, Applicant discloses selecting a shim with a blade length sized to correspond to the depth of the disc space. (See, e.g., specification, page 36, lines 23-25; Fig. 25).

Claim 3 of the proposed count is supported in Applicant's disclosure, for example, in Fig. 35. As shown in Fig. 35, blade 1222 has a height to width ratio greater than about 3.

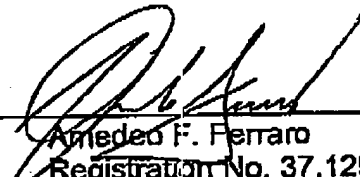
Applicant submits that the subject matter of claims 1-3 of the proposed count are fully supported by Applicant's original disclosure. The Examiner is requested to declare an interference between the present application and U.S. Patent No. 6,500,180.

If there is any fee due in connection with the filing of this Request, please charge the fee to our Deposit Account No. 50-1066.

Respectfully submitted,

MARTIN & FERRARO, LLP

Date: 12-29-03

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PROPOSED COUNT UNDER 37 C.F.R. § 1.607(a)(2)

1. A method of maintaining distraction of a spinal disc space, the method comprising:
 - exposing a portion of the spine at the disc space;
 - distracting the disc space to a desired height with a disc distractor;
 - selecting first and second shims each having a shaft connected to a blade, the blade having a height between a top surface and a bottom surface that corresponds to the distracted disc space height, the blade further having a length extending between a leading end and a trailing end, and a thickness extending between a first side surface and a second side surface;
 - inserting the first shim into the disc space with one of the side surfaces adjacent one side of the disc distractor;
 - inserting the second shim into the disc space with one of the side surfaces adjacent the other side of the disc distractor;
 - removing the disc distractor from the disc space; and
 - performing subsequent procedures in the disc space.
2. The method according to claim 1, wherein selecting a shim further comprises selecting the shim with the blade length sized to correspond to the depth of the disc space.
3. The method according to claim 1, wherein the blade height to width ratio of the selected shims is greater than about 3.